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STATE COMMERCE COMMISSION

RAILROAD EQUIPMENT LEASE

Dated as of June 15, 1972

By and Between

FIRSTBANK FINANCIAL CORPORATION

and

THE APACHE RAILWAY COMPANY

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COLLATERAL ASSIGNMENT OF LEASE AND AGREEMENT

Dated as of June 15, 1972

By and Between

FIRSTBANK FINANCIAL CORPORATION

and

MODERN WOODMEN OF AMERICA

## RAILROAD EQUIPMENT LEASE

Leasing Agreement made as of this 15th day of June, 1972, at Boston, Massachusetts, by and between FIRSTBANK FINANCIAL CORPORATION, 100 Federal Street, Boston, Massachusetts (the "Lessor") and THE APACHE RAILWAY COMPANY, Snowflake, Arizona, (the "Lessee").

The Lessor proposes to enter into a Conditional Sale Agreement dated as of June 15, 1972 (the "Security Document") with U.S. Railway Mfg. Co. (the "Builder") wherein the Builder will agree to manufacture, sell and deliver to the Lessor the railroad equipment described in Section 1 hereof. The Builder will assign its interest in the Security Document to Modern Woodman of America (the "Assignee"). The Lessor will assign this Lease for security purposes to the Assignee.

Lessor and Lessee agree as follows:

1. Lessor shall lease to Lessee and Lessee shall lease from Lessor 50 railroad cars (the "Equipment") of the following description having an acquisition cost to the Lessor of not exceeding \$700,000, upon the terms and conditions herein set forth.

<u>Type</u>	<u>AAR Mechanical Description</u>	<u>Lessee's Car Numbers (inclusive)</u>
High Side Gondola Class GTS	E 300	1300 - 1349

2. The lease term for each unit of Equipment leased hereunder shall begin on the date of delivery to and acceptance by

the Lessee of such unit, and subject to the provisions of Sections 12 and 14 hereof, shall terminate on September 30, 1984.

3. The Lessee agrees to pay to the Lessor as rental for each unit of the Equipment subject to this Lease (each such unit being hereinafter called a Unit) 48 consecutive quarter annual payments, payable on January 1, April 1, July 1, and October 1 in each year commencing with October 1, 1972. Each such quarter annual payment shall be in an amount equal to 3.117% of the Purchase Price (as defined in the Security Document) of each such Unit. In addition, Lessee agrees to pay the Lessor on the date each Unit is settled for under the Security Document an amount equal to .02% of the Purchase Price of each such Unit for each day to occur from the date of settlement under the Security Document to and including October 1, 1972. Except for the payment to be made at the date of settlement, all payments provided for in this Lease shall be made as follows:

(a) to the Assignee, at such address as the Assignee shall furnish to the Lessee, amounts equal to that portion of each of the 48 quarter annual payments, and that portion of the Stipulated Loss Value (as defined in Section 11 hereof) payable pursuant to Sections 11 and 12 hereof, as are necessary to satisfy the obligations of the Lessor under the Security Document; and

(b) to the Lessor, as agent for the Assignee, all other amounts due hereunder.

Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 10% per annum of the overdue rentals for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

4. Lessor shall not be liable to Lessee for any failure or delay in obtaining Equipment or making delivery thereof. The Lessor will cause the Equipment to be delivered to the Lessee at the point or points which, and on the dates which, the Equipment is delivered to the Lessor under the Security Document. Upon delivery of Equipment to Lessee, Lessee shall execute and deliver to Lessor a copy of Builder's invoice for such Equipment approved by Lessee together with a certificate of inspection and acceptance (the form of which is annexed as Exhibit B) with respect to the Equipment duly executed by Lessee. As between Lessor and Lessee, delivery of Equipment to Lessee and execution by Lessee of such a certificate of inspection and acceptance with respect thereto shall constitute Lessee's acknowledgment that the Equipment is in good order and condition and is of the manufacture, design and capacity selected by Lessee, that Lessee is satisfied that the same is suitable for its purpose and that LESSOR HAS MADE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT, INCLUDING WITHOUT

LIMITATION ITS DESIGN, CAPACITY, CONDITION, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. Nothing herein contained shall be deemed to limit Lessee from availing itself of any warranties, covenants and representations made by the Builder.

5. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Document, or the Builder or the Assignee or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person, or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all

events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

6. As between Lessor and Lessee, Equipment leased hereunder shall at all times be the sole and exclusive property of Lessor, and Lessee shall have no rights or property therein but only the right to use and possess the same as herein provided. So long as Lessee is not in default in any obligation to the Lessor, Lessee shall have (i) the right to use and possess the Equipment in the regular course of its business or the business of any subsidiary or affiliate of the Lessee and (ii) the option to purchase the Equipment as provided in Section 18 hereof, but both the rights and the option are subject at all times to all terms and conditions of this Lease. Such use shall be confined to the United States. Lessee shall use every reasonable precaution to prevent loss or damage to any Equipment from fire and other hazards. Lessor may inspect any Equipment and Lessee's records with respect thereto at any reasonable time upon reasonable prior notice. On or before March 31 in each year, commencing with the calendar year which begins after the expiration of 120 days from

the date of this Lease, the Lessee shall cause to be furnished to the Lessor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have, during the preceding calendar year (or since the date of this Agreement in the case of the first such statement), become worn out, lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise, and setting forth such other information regarding the condition and state of repair of the Equipment as the Lessor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Section 8 hereof have been preserved or replaced. Lessee's employees and agents shall cooperate fully with Lessor in the investigation of any claims and suits relating to Equipment. Lessee shall comply and shall use its best efforts to cause all persons using or operating Equipment to comply with all statutes, ordinances, rules and regulations from time to time in effect regarding the use and operation of the Equipment including, without limitation, those of the Interstate Commerce Commission, the Department of Transportation and the Association of American Railroads and shall at its own expense put and maintain all Equipment in good order and repair and in such condition as will comply with all of the foregoing and the requirements specified in Article 11 of the Security Document. Except as described in the next following sentence, Lessee may not assign any right or interest hereunder or permit any lien or encumbrance to remain

on Equipment other than liens placed thereon by Lessor or persons claiming against Lessor but not Lessee. Nothing contained within this Lease shall prohibit the assignment by Lessee of its interest in the Lease to the Trustee and Mortgagee under a Mortgage and Deed of Trust dated as of July 1, 1954, executed by Lessee to Neil Christensen, Trustee.

7. Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for account of the Lessor and/or the Lessee, as their interest may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have, as Vendee, under the provisions of Article 14 of the Security Document and any other rights Lessor may have under any vendor's or manufacturer's warranties, express or implied, with respect to the Equipment and any parts thereof. The acceptance of the Equipment and the execution by Lessee of a certificate of inspection and acceptance with respect thereto shall be without prejudice to and shall not constitute a waiver of any rights of Lessee to proceed against the Builder or any vendor or manufacturer of equipment or parts used in the construction of the Equipment on account of the failure of the Equipment or any parts thereof to conform to specifications, faulty, substandard or inadequate workmanship or any other defect. Lessee shall pay all costs, expenses, fees and charges incurred in connection with the use and operation of Equipment during the lease thereof. Lessee shall at all times, at its own expense, keep Equipment in good condition and repair and in good and efficient working order, reasonable wear and tear only excepted, but Lessee



shall have a reasonable time within which to repair any loss or damage to Equipment from fire or other casualty. At its own expense, Lessee shall supply and replace all parts to the Equipment and shall supply the necessary power and other items required in the operation of the Equipment. Any replacement parts, improvements and additions to the Equipment shall become and remain the property of the Lessor.

8. At or prior to the time of the delivery of any Equipment to the Lessee by the Lessor, the Lessee shall cause to be plainly, distinctly, permanently and conspicuously placed or fastened upon each side of each unit of Equipment the following legend in letters not less than one inch in height:

"PROPERTY OF FIRSTBANK FINANCIAL CORPORATION, OWNER  
AND LESSOR"

At or prior to the time of the delivery of any Unit to the Lessee by the Lessor, the Lessee shall cause one of Lessee's car numbers set forth in Section 1 hereof to be assigned to and placed on each side of each such Unit delivered. At all times after delivery the Lessee will cause each Unit to bear on each side thereof the aforesaid legend or a substitute legend requested by the Lessor and the car number so assigned to it.

9. The Lessee shall, at its own cost and expense, with respect to each unit of Equipment maintain insurance protecting Lessor, Lessee and the Assignee, covering (a) fire and extended coverage risks of the types usually insured against by companies operating railroad cars similar to the Equipment and (b) liability for bodily injury and property damage resulting from the operation of Equipment. All such insurance shall be in reputable companies. The comprehensive policies shall be

in an amount not less than the Stipulated Loss Value of the Equipment and all policies shall be payable to the Lessor, Lessee and the Assignee as their interests may appear, it being understood that Lessee shall be entitled to any insurance proceeds payable by reason of any loss or damage which is replaced or repaired by Lessee. Policies covering liability and property damage shall be provided with the following limits:

Bodily injury liability including death - \$500,00  
each person, \$1,000,000 each accident.

Property damage liability - \$500,000 each accident.

All policies of insurance shall provide for a ten-day written minimum cancellation notice to the Lessor and the Assignee and shall provide a waiver of subrogation against Lessor. Lessee shall furnish Lessor certificates or other evidence satisfactory to Lessor of compliance by Lessee with the provisions hereof.

10. Lessee agrees to pay, indemnify and hold harmless the Lessor against (a) any and all claims, demands and liabilities of whatsoever nature and all costs and expenses relating to or in any way arising out of the ordering, acquisition, title on acquisition, delivery, rejection, installation, possession, use, operation, control or disposition of the Equipment except to the extent that such costs are included in the Purchase Price of Equipment leased hereunder and except for any general administrative expenses of the Lessor and except for any claims, demands and liabilities whatsoever arising out of any tort or failure to perform any covenant hereunder by the Lessor and except that Lessee and Southwest Forest Industries, Inc., shall not be required to reimburse Lessor and Assignee more than \$3500 for attorneys fees incurred by Assignee and Lessor in connection with the preparation of this Lease and all the documents related thereto;

(b) all recording and filing fees and like expenses with respect to the filing of this Lease, the Security Document and any assignment hereof or thereof; and (c) all federal, state, county, municipal or other license or qualification fees and taxes whatsoever and penalties and interest thereon, whether assessed, levied against or payable by the Lessor or otherwise, with respect to the Equipment or the purchase, sale, rental, use, operation, control or ownership of Equipment or measured in any way by the value thereof or by the business of the Lessor with respect thereto, excepting only taxes on the net income of the Lessor or gross receipts taxes (except gross receipts taxes in the nature of or in lieu of sales, use or rental taxes). Lessee shall forthwith upon demand reimburse Lessor for any sum or sums expended by Lessor with respect to the foregoing events. To the extent that Lessee in fact indemnifies Lessor under the indemnity provisions of this Agreement, Lessee shall be subrogated to Lessor's rights in the affected transaction and shall have the right to control litigation related to the transaction and to determine the settlement of claims therein and Lessor shall render reasonable help in connection therewith at no cost to Lessor.

11. As between Lessor and Lessee, Lessee hereby assumes all risks of loss or damage to the Equipment howsoever the same may be caused, except when caused by the sole negligence or deliberate tortious act of the Lessor. Lessee shall notify Lessor promptly of any loss of or any damage beyond repair to any Equipment and shall keep Lessor informed of all developments and correspondence regarding insurance rights and other rights and liabilities arising out of such loss or damage. In the event of

total destruction or the loss or damage beyond repair of any Equipment or the commandeering or taking of any Equipment by any governmental authority, then in any such event (a) Lessee shall notify Lessor in writing of such fact, (b) on the next quarter annual rental payment date the Lessee shall pay to the Lessor or the Assignee, as set forth in Section 3 hereof an amount equal to the Stipulated Loss Value (as hereinafter defined) of such Equipment at the time of such payment, (c) the lease of such Equipment shall continue until such payment has been received by the Lessor and shall thereupon terminate, and (d) upon such payment all title to and rights in such Equipment and any insurance thereon shall pass to the Lessee.

The Stipulated Loss Value of each Unit as of any quarter annual rental payment date shall be that percentage of the Purchase Price of such Unit as is set forth in the Exhibit A hereto opposite the number of such rental payment date.

12. If, after October 1, 1977, the Equipment becomes obsolete or no longer useful in the Lessee's business, Lessee may arrange for the termination of the lease of all, but not less than all, of the Equipment in the following manner. Lessee shall give written notice to the Lessor that it desires the lease terminated. As soon as practicable the Lessor shall cause the Equipment to be sold. The lease of the Equipment and the Lessee's obligation to pay rent shall continue until the date the Equipment is sold by Lessor for cash and the Lessee makes the payment, if any, required by the last sentence of this Section 12 and shall thereupon terminate. From the proceeds of

sale there shall be deducted all reasonable expenses paid or incurred in connection with the redelivery, storage and sale of the Equipment. If the net proceeds of sale after such deductions are less than the Stipulated Loss Value of the Equipment at the termination of the lease of the Equipment, the Lessee shall forthwith pay to the Lessor or any such assignee an amount equal to such deficiency.

13. Upon the termination of the lease of the Equipment at the end of the Lease term provided in Section 2 hereof or by reason of an event of default pursuant to Section 14 hereof the Lessee, at its sole expense, shall forthwith deliver possession of such Equipment to the Lessor in good order and repair, ordinary wear and tear excepted. For the purpose of delivering possession of any Equipment to the Lessor as above required, the Lessee shall at its own cost and expense

a) forthwith assemble the Equipment and place it upon such storage tracks of the Lessee as the Lessor may designate or, in the absence of such designation, as the Lessee may select,

b) permit the Lessor to store such Equipment on such tracks for a period, in the case of the termination at the end of the Lease term, not exceeding 90 days or, in the case of termination by reason of an event of default, until the Lessor shall have sold or otherwise disposed of the Equipment, and

c) transport or cause to be transported such Equipment at any time within such period, to any place or places on the line of railroad operated by it or to any point of interchange

with any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Equipment.

Notwithstanding the termination of the lease of any Equipment, the provisions of Sections 9, 10 and 11 shall continue to apply to such Equipment during such time, within the period provided herein, as such Equipment is located upon the tracks of the Lessee or in respect of any of the matters referred to in Section 10 hereof arising out of or based upon an event occurring prior to the expiration of such period.

14. Upon the happening of any of the following events of default:

Default in the payment of rent hereunder beyond the tenth day after the payment date on which the rent is due or default in the payment or performance of any other liability, obligation or covenant of the Lessee to the Lessor and the continuance of such default for thirty (30) days after written notice to the Lessee and Southwest Forest Industries, Inc. sent by registered or certified mail by the Lessor, or the termination

of existence or business failure of, or the making of an assignment for the benefit of creditors by, the Lessee or by Southwest Forest Industries, Inc. or if bankruptcy, reorganization, liquidation or receivership proceedings are instituted by or against the Lessee or Southwest Forest Industries, Inc. and any voluntary proceedings remain pending for thirty (30) days and any such involuntary proceedings are consented to or remain pending for ninety (90) days, the Lessor may in its discretion, to the extent such remedies are available to a lessor under applicable law, do one or more of the following: (a) terminate this Lease upon written notice to the Lessee sent by ordinary mail, (b) whether or not this Lease is terminated, take immediate possession of any or all of the Equipment, wherever situated, and for such purpose, enter upon any premises without liability for so doing, (c) sell, dispose of, hold, use or lease any Equipment as the Lessor in its sole discretion may decide, without any duty to account to Lessee with respect to such action or any proceeds thereof, or (d) exercise any other right or remedy which may be available under applicable law or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof. If after default Lessor repossesses and sells Equipment, Lessee shall be liable for any unpaid rent to the date of such repossession plus the amount of any deficiency between the net proceeds of sale received and retained by Lessor and the Stipulated Loss Value of

the Equipment at the time of such repossession. If after default Lessee fails to deliver or converts or destroys any Equipment, Lessee shall be liable to the Lessor for any unpaid rent to the date of such failure to deliver, conversion or destruction plus the Stipulated Loss Value of any such Equipment on such date. In addition after default Lessee shall be liable to Lessor for all loss, costs and expenses incurred by Lessor by reason of the default including without limitation reasonable attorneys' fees and expenses of repossession and sale.

15. If requested by the Lessor in writing, the Lessee will cause this Lease, the Security Document and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Document and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, re-register, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Assignee for the purpose of proper protection, to their satisfaction, of the Assignee's and the Lessor's respective interests in the Equipment, or for the purpose of carrying out the intention of this Lease, the Security Document or the assignment thereof to the Assignee; and the Lessee will promptly furnish to the Assignee and the Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto



satisfactory to the Assignee and the Lessor. ~~This Lease and the Security Document shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any unit of Equipment.~~

16. Lessee acknowledges notice of the intended assignment by the Lessor to the Assignee of this Lease and the rents and all other sums due and to become due hereunder, all as security for obligations of the Lessor to the Assignee. After such assignment the terms and provisions of this Agreement may not be altered, modified or waived without the written consent of the Assignee. So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease but notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Equipment, upon default by the Lessee hereunder are subject to the rights of the Builder and the Assignee under the Security Document. The assignment by the Lessor to the Assignee of rights hereunder is for security purposes and shall not impose on the Assignee any of the duties or obligations of the Lessor hereunder, but in all other respects the Assignee shall have all the rights of the Lessor hereunder to the extent necessary to realize upon rents and other monies payable by the Lessee and to protect the Assignee's interest in Equipment resulting from the assignment by the Builder of the Security Document. The rights of the Assignee under such assignment, and of any participant in or subsequent assignee of such rights shall

not be subject to any setoff or counterclaim arising out of any obligation of the Lessor with respect to the Equipment leased hereunder or the leasing of the Equipment, nor subject to any setoff or counterclaim by reason of any other indebtedness or liability at any time owing to the Lessee by the Lessor, except for the right of the Lessee to uninterrupted use of the Equipment as provided in the Security Document.

17. On the Closing Date (as defined in the Security Document), the Lessee will deliver to the Lessor two counterparts of each of the written opinion of counsel for the Lessee and the written opinion of counsel for Southwest Forest Industries, Inc. (the "Guarantor"), each opinion to be addressed to the Lessor and the Assignee and each to be satisfactory in scope and substance to the Lessor and the Assignee and their respective counsel. The written opinion of counsel for the Lessee shall be to the effect that:

A. the Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of its state of incorporation (specifying the same) with adequate corporate power to enter into this Lease;

B. this Lease has been duly authorized, executed and delivered by the Lessee and constitutes a valid, legal and binding agreement of the Lessee, enforceable in accordance with its terms;

C. the Security Document and this Lease (and the assignments thereof to the Assignee), have been

duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and such filing and recordation will protect the Assignee's and the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government is necessary in order to protect the interests of the Assignee or the Lessor in and to the Units;

D. no approval is required from any public regulatory body with respect to the entering into or performance of this Lease;

E. the entering into and performance of this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

F. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Assignee's or Lessor's right, title and interest therein; provided, however, that such liens may attach to the rights of the Lessee hereunder in and to the Units.

The written opinion of counsel for the Guarantor shall be to the effect that:

A. the Guarantor is a corporation legally incorporated and validly existing, in good standing, under the laws of the jurisdiction of its incorporation, with adequate corporate power to enter into the Guaranty dated as of August 14, 1972 (the "Guaranty");

B. the Guaranty has been duly authorized, executed and delivered by the Guarantor and constitutes a legal and valid agreement binding upon the Guarantor and enforceable in accordance with its terms;

C. no approval is required of any governmental agency or public regulatory body with respect to the entering into or performance of the Guaranty by the Guarantor, or, if any such approval is required, it has been duly obtained; and

D. the entering into and performance of the Guaranty will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust or other agreement or instrument to which the Guarantor is a party or by which it may be bound.

18. Lessor hereby grants to Lessee the right to purchase any Unit of Equipment upon the expiration of the full term of the lease thereof, for cash at a price equal to its then fair market value determined as hereinafter set forth, provided that Lessee is not then in default hereunder. Lessee may exercise such option only by giving Lessor written notice of the exercise of the purchase option, specifying the particular Equipment, its location, its Purchase Price and containing a binding offer to pay a price which the Lessee believes to be the fair market value of the Equipment (the Lessee's Offer Price), such notice and offer to be given not less than one hundred twenty (120) days prior to the expiration of the full term of the lease of such Equipment. If upon the expiration of thirty (30) days after the giving of such notice Lessor and Lessee have not determined the fair market value by mutual agreement in writing, then the fair market value shall be determined by appraisal as follows: Each of the Lessor and the Lessee shall forthwith name an appraiser. Within ten days thereafter the two appraisers named by the respective parties shall name a third appraiser, and if the appraisers named by the parties fail to name a third appraiser, by agreement, within ten days following their appointment, a third appraiser shall be named by the American Arbitration Association pursuant to the rules of such Association. Within thirty days after appointment of the third appraiser as aforesaid, the appraisers shall report their decision as to the amount which represents the fair market value of the Equipment, the decision of a majority of the

appraisers to be controlling. Such decision shall be made in writing and pursuant to the rules of the American Arbitration Association. Any hearings held by the appraisers shall take place in the City of Boston, Massachusetts. If the fair market value as determined by the appraisers is an amount which is equal to or greater than 115% of the Lessee's Offer Price, the costs and expenses of the appraisers will be borne by the Lessee. If the fair market value as determined by the appraisers is an amount which is less than 115% of the Lessee's Offer Price, the costs and expenses of the appraisers will be shared equally by the Lessor and Lessee.

If the fair market value of the Equipment to be purchased has been finally determined (as hereinbefore provided) on or before the date of expiration of the full term of the lease, Lessee shall upon such date pay to Lessor an amount in cash equal to such fair market value.

If for any reason the fair market value has not then been finally determined, the Lessee shall upon such expiration date pay to Lessor (as a deposit against its obligation to purchase arising from its exercise of the option herein provided) a sum of money in an amount then to be agreed, which shall not be less than the then Stipulated Loss Value of such Equipment; and the fair market value shall be determined as promptly as possible under the appraisal procedure hereinbefore provided. When the fair market value has been finally determined by such appraisal, the Lessee shall forthwith pay to Lessor an amount in cash equal to the amount by which the appraised value exceeds the amount of the deposit, plus interest at the rate of

9% per annum, from the date of expiration of the term of the lease to the date of payment, upon any excess of the appraised value over the amount of the deposit.

If the amount of Lessee's payment of the fair market value to Lessor (upon the expiration date or upon the final determination of appraised value, as the case may be) is less than the Stipulated Loss Value of such Equipment at the expiration of the full term of the lease, the Lessee shall forthwith, in addition, pay to Lessor in cash an amount equal to the deficiency as an adjustment of rent. Lessor shall, however, be entitled to retain any excess of such payment over the Stipulated Loss Value at the expiration of the lease. Upon receipt of payment, Lessor shall deliver to Lessee a Bill of Sale acknowledging conveyance of the Equipment to Lessee free and clear of all security interests or liens imposed by Lessor or persons claiming against Lessor but not Lessee.

If the Lessee's purchase option hereunder is not exercised or if Lessee fails to make the required payment(s) in full either on the day following the expiration of the full term of the lease, or not less than ten days following the final determination of fair market value, as the case may be, then Lessor may, or Lessee shall (if so requested by Lessor) on Lessor's behalf but without cost to Lessor, cause the Equipment to be sold and the entire net proceeds of such sale shall be retained by or transmitted to Lessor. If the net proceeds of such sale of the Equipment received by Lessor

are less than the Stipulated Loss Value of the Equipment at the expiration date of this lease, Lessee shall forthwith pay to Lessor in cash an amount equal to the deficiency as an adjustment of rent. Lessor shall, however, be entitled to retain any excess of net proceeds over the then Stipulated Loss Value.

19. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

20. This Lease may be executed in several counterparts, and such counterparts together shall constitute but one and the same instrument. The counterpart or counterparts delivered to the Assignee shall be marked and be the "Original" and all other counterparts shall be marked and be "Duplicates" thereof. Although this Lease is dated as of June 15, 1972, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

21. This Agreement and all rights hereunder shall be governed by the law of Massachusetts, except to the extent that such rights are governed by the provisions of Section 20c of the Interstate Commerce Act. Each of the parties hereto acknowledges that the other party shall not by act, delay, omission or otherwise be deemed to have waived any of its



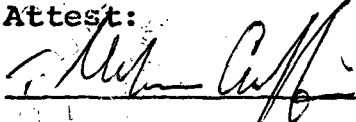
rights or remedies hereunder or under any other instrument given hereunder unless such waiver is given in writing and the same shall be binding to the extent therein provided and only upon the parties signing the same. A waiver on any one occasion shall not be construed as a waiver on any future occasion. No executory agreement shall be effective to change, modify or discharge, in whole or in part, this Lease, or any other instrument given in connection therewith unless such executory agreement is in writing and signed by the party to be charged therewith. All rights, remedies and powers granted herein, or in any other instrument given in connection herewith, shall be cumulative and may be exercised singularly or cumulatively.

22. All notices and other communications required to be given under this lease shall be in writing, and shall be deemed to have been given when personally delivered or forty-eight (48) hours after being deposited postage prepaid in a receptacle for the receipt of mail which is maintained under the exclusive control of the United States Post Office addressed to Lessor and Lessee as their addresses appear at the beginning of this Lease, and if to Southwest Forest Industries, Inc.: Southwest Forest Industries, Inc., 3443 North Central Avenue, Phoenix, Arizona 85011, or at such addresses as may hereafter be furnished in writing by either party to the other.

IN WITNESS WHEREOF, Lessor and Lessee have duly  
executed six counterpart originals of this Leasing Agreement  
as of the day and year first above written.

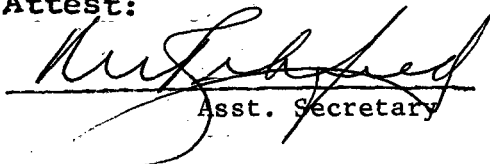
[Corporate seal]

Attest:

  
\_\_\_\_\_

[Corporate seal]

Attest:

  
\_\_\_\_\_  
Asst. Secretary

FIRSTBANK FINANCIAL CORPORATION, Lessor

By

  
\_\_\_\_\_

THE APACHE RAILWAY COMPANY, Lessee

By

  
\_\_\_\_\_  
Vice President

Commonwealth of Massachusetts )  
County of Suffolk ) ss.:

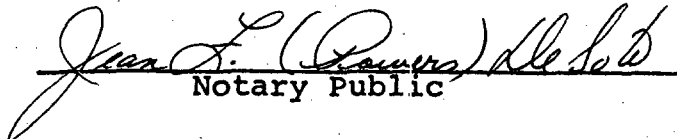
On this <sup>September</sup> 12<sup>th</sup> day of ~~August~~ 1972, before me personally appeared E.C. Mace, to me personally known, who, being by me duly sworn, says that he is the Treasurer of Firstbank Financial Corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
Notary Public

My Commission expires: EDNA MARIE VARNUM, NOTARY PUBLIC  
My commission expires Nov. 26, 1976

State of Arizona )  
County of Maricopa ) ss.:

On this 8th day of <sup>September</sup> ~~August~~ 1972, before me personally appeared Flake Willis , to me personally known, who, being by me duly sworn, says that he is a Vice President of The Apache Railway Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
Notary Public

My Commission expires:  
November 14, 1973

EXHIBIT A

<u>End of</u> <u>Quarter</u>	<u>Percentage of Purchase</u> <u>Price Used to Determine</u> <u>the Stipulated Loss Value</u>	<u>End of</u> <u>Quarter</u>	<u>Percentage of Purchase</u> <u>Price Used to Determine</u> <u>the Stipulated Loss Value</u>
1	113.66%	25	73.39%
2	112.30	26	71.31
3	110.92	27	69.20
4	109.51	28	67.05
5	108.08	29	64.86
6	106.62	30	62.63
7	105.13	31	60.36
8	103.62	32	58.05
9	102.09	33	55.70
10	100.52	34	53.31
11	98.93	35	50.87
12	97.30	36	48.40
13	95.65	37	45.87
14	93.97	38	43.31
15	92.26	39	40.69
16	90.52	40	38.03
17	88.75	41	35.33
18	86.95	42	32.57
19	85.11	43	29.77
20	83.24	44	26.91
21	81.34	45	24.01
22	79.41	46	21.05
23	77.44	47	18.04
24	75.43	48	15.00

FIRSTBANK FINANCIAL CORPORATION, LESSOR

By: 

THE APACHE RAILWAY COMPANY, LESSEE

By: 

## CERTIFICATE OF INSPECTION AND ACCEPTANCE

This is to certify that I have inspected and accepted on behalf of FIRSTBANK FINANCIAL CORPORATION, as Lessor, and THE APACHE RAILWAY COMPANY, as Lessee, the following railroad equipment which has been completed in accordance with the terms of the Purchase Order dated \_\_\_\_\_, 1972 from \_\_\_\_\_ to \_\_\_\_\_

<u>DESCRIPTION</u>	<u>QUANTITY</u>	<u>RAILROAD CAR NUMBERS</u>
--------------------	-----------------	---------------------------------

I further certify that there was plainly, distinctly, permanently and conspicuously marked on each side of each unit of equipment the following legend in letters not less than one inch (1") in height:

"PROPERTY OF FIRSTBANK FINANCIAL CORPORATION, OWNER  
AND LESSOR"

\_\_\_\_\_  
Authorized Inspector

Dated at \_\_\_\_\_  
this \_\_\_\_\_ day of \_\_\_\_\_, 1972

COLLATERAL ASSIGNMENT OF LEASE AND AGREEMENT dated as of June 15, 1972 (hereinafter called "this Assignment"), by and between Firstbank Financial Corporation (hereinafter called the Company) and Modern Woodman<sup>of</sup> America (hereinafter called the Investor). *J. H. C. Fly*

WHEREAS the Company has entered into a Conditional Sale Agreement dated as of June 15, 1972 (hereinafter called the Conditional Sale Agreement), with U.S. Railway Mfg. Co. (hereinafter called the Builder) providing for the sale to the Company of such units of railroad equipment (hereinafter called the Units) described in Annex A to the Conditional Sale Agreement as are delivered to and accepted by the Company thereunder; and

WHEREAS the Builder has assigned its interests in the Conditional Sale Agreement to the Investor, pursuant to an Agreement and Assignment dated as of June 15, 1972; and

WHEREAS the Company and The Apache Railway Company (hereinafter called the Lessee) have entered into a Railroad Equipment Lease dated as of June 15, 1972 (hereinafter called the Lease), providing for the leasing by the Company to the Lessee of the Units; and

WHEREAS, in order to provide security for the obligations of the Company under the Conditional Sale Agreement and as an inducement to the Investor to invest in the Conditional Sale Indebtedness (as that term is defined in the Conditional Sale Agreement), the Company has agreed to assign for security purposes its rights in, to and under the Lease to the Investor;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. Subject to the provisions of Paragraph 13 hereof, the Company hereby assigns, transfers and sets over unto the Investor, as collateral security for the payment and performance of the Company's obligations under the

Conditional Sale Agreement, all the Company's right, title and interest as Lessor under the Lease, together with all rights, powers, privileges, and other benefits of the Company as Lessor under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Company from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, payments with respect to the guarantee of the Conditional Sale Agreement by the Lessee or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Company, as Lessor, is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Company hereby irrevocably authorizes and empowers the Investor in its own name, or the name of its nominee, or in the name of the Company or as its attorney, to ask, demand, sue for, collect and receive any and all sums to which the Company is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

As agent for the Investor, the Company agrees to accept any payments made by the Lessee and to hold and disburse the Payments in accordance with the instructions of the Investor and in the absence of any such instructions, in accordance with the terms of Section 3 of the Lease.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Investor to, or transfer, or pass, or in any way affect or modify the liability of the Company under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Company to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Company or persons other than the Investor.

3. To protect the security afforded by this Assignment the Company agrees as follows:

(a) The Company will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Company; without the written consent of the Investor, the Company will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Company agrees that any amendment, modification or termination thereof without such consent shall be void.

(b) At the Company's sole cost and expense, the Company will appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties or liabilities of the Company under the Lease.

(c) Should the Company fail to make any payment or to do any act which this Assignment requires the Company to make or do, then the Investor, but without obligation so to do, after first making written demand upon the Company and affording the Company a reasonable period of time within which to make such payment or do such act, but without releasing the Company from any obligation hereunder, may make or do the same in such manner and to such extent as the Investor may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Investor, and also the right to perform and discharge each and every obligation, covenant and agreement



of the Company contained in the Lease; and in exercising any such powers, the Investor may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees, and the Company will reimburse the Investor for such costs, expenses and fees with interest at 9% per annum.

4. The Company does hereby constitute the Investor the Company's true and lawful attorney, irrevocably, with full power (in the name of the Company, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Company is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Investor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Company's obligations under the Conditional Sale Agreement, this Assignment and all rights herein assigned to the Investor shall terminate, and all estate, right, title and interest of the Investor in and to the Lease shall revert to the Company.

6. The Company represents and warrants that (a) the execution and delivery by the Company of the Lease, this Assignment and the Conditional Sale Agreement have each been duly authorized, and the Lease, this Assignment and the Conditional Sale Agreement are and will remain the valid and binding obligations of the Company in accordance with their terms; (b) the Company has not executed any other assignment of the Lease and the Investor's right to receive all payments under the Lease is and will continue to be free and clear of any and all liens, agreements, security interests or other encumbrances, (c) notwithstanding this Assignment, the Company will conform and comply with each and all of the covenants and conditions in the Lease and the Conditional Sale Agreement set forth to be complied with by it, (d) to the knowledge of the Company, it has performed all obligations on its part to be performed under the Lease and the Conditional Sale Agreement on or prior to the date hereof and (e) the Lease

and the Conditional Sale Agreement are in full force and effect and have not been canceled and to the knowledge of the Company there has not occurred on or prior to the date hereof any event of default under the Conditional Sale Agreement or any event which with notice and/or lapse of time would constitute such an event of default.

If an event of default under the Conditional Sale Agreement shall occur and be continuing, the Investor may declare all sums secured hereby immediately due and payable and may at its option without notice and without regard to the adequacy of the security of the sums hereby secured, either in person or by an agent with or without bringing any action or proceeding or by a receiver to be appointed by a court, take possession of and operate the Units or any part thereof in accordance with the terms of the Conditional Sale Agreement and do any acts which the Investor deems proper to protect the security hereof, either with or without taking possession of the Units. The taking possession of the Units and the taking of any action permitted as aforesaid shall not cure or waive any default or waive, modify or affect any default hereunder or under the Lease or invalidate any act done hereunder.

7. The Company covenants and agrees with the Investor that in any suit, proceeding or action brought by the Investor, as assignee of the Company's right, title and interest under the Lease for any instalment of, or interest on, any rental or other sum owing thereunder, or to enforce any provisions of the Lease, the Company will save, indemnify and keep the Investor harmless from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Lessee, or its successors, arising out of a breach by the Company of any obligation under the Lease or arising out of any other indebtedness or liability at any time owing to the Lessee or its successors from the Company. Any and all such obligations of the Company shall be and remain enforceable against and only against the Company and shall not be enforceable against the Investor or any part or parties in whom any of the rights of the Company under the Lease shall vest by reason of successive assignments or transfers.

8. The Company will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Investor in order to confirm or further assure, the interests of the Investor hereunder.

9. The Investor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Investor hereunder.

10. This Assignment shall be governed by the laws of the Commonwealth of Massachusetts, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act. Prior to the execution and delivery of the Lease, the Company agrees to qualify, and at all times during the continuance of the Lease to remain qualified, to do business in the state of Arizona pursuant to the laws of such state, and to otherwise ensure the enforceability of the Lease in such state.

11. The Company shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Investor at its office at 1701 First Avenue, Rock Island, Illinois, 61201, Attention: Bond and Stock Department (in the case of payments), or at such other address as the Investor shall designate.

12. The Company will promptly cause this Assignment to be filed and recorded in accordance with §15 of the Lease.

13. Anything herein or in the Lease or in the Conditional Sale Agreement contained to the contrary notwithstanding:

(a) the Company may, but shall be under no obligation to, cure any of the events of default set forth in Section 14 of the Lease suffered or permitted to occur by the Lessee under the Lease by making any payment (whether of rent, casualty payment, indemnity payment or other payment) or by performing any act which the Lease requires the Lessee to make or perform. Upon the making of any such payment or the performance of any such act by the Company, the event of default under the Lease or any

event of default under the Conditional Sale Agreement which occurred in consequence of the Lessee's having failed to make such payment or to perform such act, shall for all purposes of both the Lease and the Conditional Sale Agreement be deemed to have been cured to the same extent as if the Lessee had made such payment or performed such act. The curing of any event of default by the Company shall not be deemed to impose any obligation or liability upon the Company to cure any subsequent event of default suffered or permitted to occur by the Lessee; and

(b) the Investor for itself and its successors and assigns, hereby agrees with the Company and its successors and assigns, that the Investor will not, so long as no event of default under the Lease or an event of default under the Conditional Sale Agreement has occurred and is then continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits assigned and transferred by the Company to the Investor by this Assignment.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

FIRSTBANK FINANCIAL CORPORATION

[Corporate seal]

By

*Gerald P. Lowmy*  
*First Vice President*

Attest:

*[Signature]*

F. J. H. C. *[Signature]*  
MODERN WOODMAN OF AMERICA

[Corporate seal]

By

*J. M. Cheney*  
*President*

Attest:

*Robert H. Platt*  
*National Secretary*

ACKNOWLEDGMENT OF COLLATERAL ASSIGNMENT  
OF LEASE AND AGREEMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Collateral Assignment of Lease and Agreement is hereby acknowledged as of *Sept. 8*, 1972.

THE APACHE RAILWAY COMPANY

By:

*Flake Willis*  
*Vice President*

Commonwealth of Massachusetts) ss.:  
County of Suffolk )

On this 23<sup>rd</sup> day of August 1972, before me personally appeared Richard H. Conny to me personally known, who, being by me duly sworn, says that he is the asst. Treas. of Firstbank Financial Corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Mildred L. Moore  
Notary Public

My Commission expires:

MY COMMISSION EXPIRES FEBRUARY 18, 1973

State of Illinois )  
County of Rock Island) ss.:

On this 16th day of August 1972, before me personally appeared T. W. Cheney, to me personally known, who, being by me duly sworn, says that he is a President of Modern Woodman of America, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Maurice E. Young  
Notary Public

My Commission expires: My Commission Expires Aug. 31, 1973

Maurice E. Young